

GAHC040000352024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : AB/10/2024

Saurav Kumar
S/o Shrawan Kumar, resident of Gorapar village, PO Paingari, Warisaligan Nawada,
Bihar 805130

VERSUS

The State of AP
represented by the PP, AP

Advocate for the Petitioner : Vijay Jamoh

Advocate for the Respondent : Mr. T. Ete, Addl. P P of AP

-BEFORE-

HON'BLE MRS. JUSTICE MALASRI NANDI

05.02.2024

Heard Mr. V. Jamoh, learned counsel for the petitioner and Mr. T. Ete, learned Addl. PP for the State.

Case Diary, as sought for, is received in connection with Namsai P.S. Case No.48/2023 under Section 420 of the Indian Penal Code.

It is submitted by the learned counsel for the petitioner that the present petitioner has not been named in the FIR and the kingpin of this

case was earlier arrested. Later on, after 33 days, he was released on bail by the learned Judicial Magistrate, First Class, Namsai.

In view of the above, the learned counsel for the petitioner has prayed that this bail application may be considered since the petitioner has not been named in the FIR.

On the other hand, Mr. Ete, learned Addl. PP has submitted that the petitioner was declared absconder by the learned Judicial Magistrate, First Class, Namsai vide order, dated 12.01.2024.

It is a settled position of law that a person who has been declared as absconder is not entitled for grant of pre-arrest bail.

In view of the above submission as well as the case law of Hon'ble Supreme Court in the case of ***State of Madhya Pradesh-vs- Pradeep Sharma*** reported in ***[2013] 8 Supreme 699*** and has held that:-

“12...From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as “proclaimed offender”, there is no question of granted anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of section 82 of the Code he is not entitled to the relief of anticipatory bail. It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi

and Vijay @ Monu Brahambhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine and Toxicology Government Medical College and Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk rabri. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under Section 82 of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/ accused under Section 82 of the Code to answer the complaint on 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating "facts and circumstances of the case", granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under Sections 302 and 120B read with Section 34 of IPC. In such serious offences, particularly, the respondents/ accused being proclaimed offenders, we are unable³ to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail".

"13...In the light of what is stated above, the impugned orders of High Court dated 10.01.2013 and 17.01.2013 in Misc. Criminal Case Nos. 9996 of 2012 and 15283 of 2012 respectively are set aside.

Consequently, the subsequent order of the CJM dated 20.02.2013 in Crime No. 1034 of 2011 releasing the accused on bail after taking them into custody in compliance with the impugned order of the High Court is also set aside”.

In view of the above, as it appears that the petitioner was declared absconder as per the order of the learned Judicial Magistrate, First Class, Namsai dated 12.01.2024 as well as the proposition of law laid down by the Hon’ble Supreme Court in the aforesaid judgment, the pre-arrest bail of the petitioner stands rejected.

Send back the Case Diary, forthwith.

This bail application accordingly stands disposed of.

JUDGE

Comparing Assistant